

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT A. CORDERY, DAVID K. LEE,
LEON A. PINTSOV, FREDERICK W. RYAN, JR.,
and MONROE A. WEIANT, JR.

MAILED

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Application 09/650,177

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (hereinafter the “Board”) on July 30, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

The Examiner’s 35 U.S.C. § 112 Rejection

On August 8, 2005, Applicants filed a Response After Final Rejection. In an Advisory Action mailed on September 19, 2005, the Examiner notified Applicants that their request for reconsideration had been considered but did not place the application in condition for allowance. In addition, on page 2 of the Advisory Action, last sentence, the Examiner notified Applicants that he agreed to “withdraw the 112 rejection.”

Application 09/650,177

On November 10, 2005, Applicants filed an Appeal Brief. On March 3, 2006, the Examiner mailed an Examiner's Answer in response to Applicants' Brief. The Examiner states on page 2, paragraph (6), of the Answer that Applicants' "statement of the grounds of rejection to be reviewed on appeal is correct." However, on page 4 of the Examiner's Answer, second paragraph, the Examiner indicates that he maintains Applicants' § 112 rejection and states his reasons therein.

On April 11, 2006, Applicants filed a Reply Brief. On page 1 of the Reply Brief, Applicants mention the § 112 rejection and state that "the rejection under 35 U.S.C. § 112 was withdrawn before the Appeal Brief was filed and is no longer a ground of rejection to be reviewed on Appeal." It is not clear from the record as to the proper status of the rejection of claims 35 and 37 under § 112, or why the Examiner has maintained the § 112 rejection, or whether the Examiner has erred in his rejection of the claims on appeal. Clarification is required.

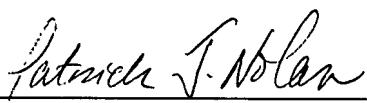
Accordingly, it is

ORDERED that the application is returned to the Examiner to resolve the following issues:

- (1) to clarify for the record the status of the rejection of claims under 35 U.S.C. § 112,
- (2) to notify Applicants in writing as to the status of said rejection, and
- (3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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By:


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